IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

ESCOLASTICO MARTINEZ,

      Plaintiff,

v.   No. CIV 99-1133 JP/LCS

KENNETH S. APFEL,
COMMISSIONER OF SOCIAL SECURITY,

      Defendant.

MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION

THIS MATTER came before the Court upon Plaintiff's Motion to Reinstate Benefits (Doc. 6), filed June 13, 2000. The Commissioner of Social Security issued a final decision determining that Plaintiff was no longer entitled to disability insurance benefits.   The United States Magistrate Judge, having considered the Motion, the memoranda submitted by the parties, the applicable law, and being otherwise fully advised, finds that the motion is well-taken and recommends that it be **GRANTED**.

PROPOSED FINDINGS

1.   The Commissioner of Social Security (Commissioner) issued a final decision determining that Plaintiff was no longer entitled to disability insurance benefits because his health had improved and he was able to work. (Pl. Ex. 1.) After Plaintiff timely appealed the denial to this Court, Respondent moved to remand to the Commissioner pursuant to sentence six of 42 U.S.C. § 405(g). Sentence six allows the Court to remand the case to the Commissioner upon motion of the

Commissioner, for good cause shown, before he files his answer.   *See* 42 U.S.C. § 405(g).

Respondent requested the remand because portions of the tape recording of the hearing before the

ALJ were inaudible. On January 24, 2000, the Court remanded the case for further action. (Doc.

5.)   On May 22, 2000, the Appeals Council vacated the prior, final decision of the Commissioner,

and remanded the case to an ALJ for a *de novo* hearing and a new decision. (Pl. Ex. 4.)

      2.   The first question is whether this Court has subject matter jurisdiction over Plaintiff's

Motion to Reinstate Benefits. The Court retains continuing jurisdiction over a cases remanded to the

Commissioner pursuant to sentence six of 42 U.S.C. § 405(g). *See Melkonyan v. Sullivan*, 501 U.S.

89, 99 (1991). Because the case was remanded under sentence six, the Court has jurisdiction over

this matter.

      3.   Plaintiff requests reinstatement of his disability benefits pursuant to 20 C.F.R. §

404.1597a(i)(1). That section provides:

> If we send back (remand) your case to an administrative law judge for
> further action under the rules provided in §404.977, and the
> administrative law judge's decision is no longer in effect, continued
> benefits are payable pending a new decision by the administrative law
> judge or final action is taken by the Appeals Council on the
> administrative law judge's recommended decision.
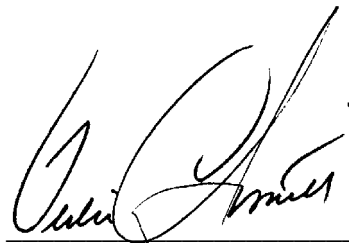
20 C.F.R. § 404.1597a(i)(1).

      4.   The Commissioner contends that Plaintiff is not entitled to reinstatement of his benefits

because he already received a hearing and decision from the ALJ. The Appeal's Council action of

May 22, 2000 vacated the prior decision of the ALJ and remanded the case to an ALJ for a *de novo*

hearing and a new decision. The prior decision discontinuing benefits is no longer in effect and the

matter has been remanded to an ALJ for further action. Continued benefits are therefore payable

pursuant to 20 C.F.R. §404.1597a(i)(1).   Accordingly, I recommend that Plaintiff's Motion to Reinstate Benefits be granted.

RECOMMENDED DISPOSITION

I recommend that Plaintiff's Motion to Reinstate Benefits, filed June 13, 2000, be **GRANTED**.

Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE